

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2114 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEMABEN D/O.KHETABHAI

RAMSING

Versus

THE MAMLATDAR AND ALT WAV

Appearance:

MS KUSUM M SHAH for Petitioner

M/S PURNANAND & CO for Respondent No. 1

M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 05/05/2000

ORAL JUDGEMENT

Petitioner, being aggrieved by an order dated 30th Sept. 1982 passed by the Mamlatdar & Agricultural Land Tribunal (Mamlatdar & ALT, for brevity) constituted under the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the the Act) and confirmed in appeal No. 13/83 by Deputy Collector, Tharad by order

dated 31.5.1983 and by the Revenue Tribunal in Revision Application No. TEB/BA/462/84, has approached this Court.

Learned advocate appearing for the petitioner submitted that the deceased Kheta Ramsing Kanabi of village Bhankhod was an Agriculturist. He was holding two survey numbers, 15 and 16 admeasuring 55 Acres 05 Gunthas and 22 Acres respectively, of agricultural land. According to Mamlatdar, Kheta Ramsing Kanabi, holder of the land had a family consisting of (1). deceased Kheta bhai, (2), his wife, (3). Hemiben - a minor daughter, (4). Karsan - a minor son, (5). Bhanav - a minor son, and, (6). Raghuben - a minor daughter. After considering the material placed on the record, the Mamlatdar & ALT framed the issues and the relevant issue for decision is as under:

"Considering the members of family, in view of the provisions contained in sections 6(3B) or 6(3C), would the holder be entitled to hold land in excess of the ceiling or to the extent as indicated in sections 6(3B) or 6(3C) of the Act?"

The relevant provisions, section 6(3B) and 6(3C) read as under:-

"6(3B). Where a family or a joint family consist of more than five members comprising a person and other members belonging to all or any of the following categories, namely:-

- (i). minor son,
- (ii). widow of a pre-deceased son,
- (iii). minor son or unmarried daughter of a pre-deceased son, where his or her mother is dead,

such family shall be entitled to hold land in excess of the ceiling area to the extent of one-fifth of the ceiling area for each member in excess of five, so however that the total holding of the family does not exceed twice the ceiling area and in such a case, in relation to the holding of such family, such area shall be deemed to be the ceiling area:

Provided that if any land is held separately also by any member of such family, the land so held separately by such member shall be grouped together with the land to such family for

the purpose of determining the total holding of such family:

Provided further that where in consequences of any member of such family holding any land in any other part of India outside the State, the ceiling area in relation to the family is reduced as provided in sub-section (3A) the one-fifth of the ceiling area as aforesaid shall be calculated with reference to the ceiling area as would have been applicable had no such land been held by such member in any other part of India.

3(C). Where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section (1).

Mr. Patel, learned Government Solicitor submitted that no error has been committed by the authorities deciding the subject matter under the provisions of the Act. He submitted that infact Kheta Ramsing Kanabi had only two issues, viz. Hemiben and Kankuben. Before the Court it was suggested that there were six members in the family of the deceased. It appears that this contention is not well founded. From the order passed by the Mamlatdar, it is very clear that husband of Hemiben appeared before the authority and he stated that his family consisted of himself, his wife Hemiben, minor sons Karsan and Bhanav, and a minor daughter Raghuben. Therefore, Mr. Patel submitted that it is incorrect to state that these persons were members of the family of deceased Kheta Ramsing Kanabi. The statement of Hemiben was recorded wherein she has stated that her father expired, leaving two daughters. She has further stated that she being the elder one, the property is transferred to her name. Her sister has also share in the property. She has stated that her sister Kankuben is residing with her in-laws. Thus, it is very clear that the family of the deceased Kheta Ramsing Kanabi consisted of only deceased and his two daughters, and if that be so, no apparent error has been committed so as to exercise the jurisdiction under Article 227 of the Constitution of India. Therefore, this petition is dismissed. Order of status quo stands vacated. Rule is discharged. No order as to costs.